



Agenda Date: 7/1/09
Agenda Item: IA

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF BIRCH)
COMMUNICATIONS, INC. FOR APPROVAL TO)
PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES THROUGHOUT)
THE STATE OF NEW JERSEY)

ORDER

DOCKET NO. TE09040307

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the Federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated April 6, 2009, Birch Communications, Inc. ("Petitioner" or "Birch") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide facilities-based and resold local exchange and intrastate interexchange telecommunications services throughout the State of New Jersey. Petitioner has submitted its financial information under seal and has filed a sworn affidavit with substantiation for confidential treatment in accordance with the Board's rules for determining confidentiality, N.J.A.C. 14:1-12 et seq. and in compliance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

Birch is a privately owned company organized under the laws of the State of Georgia. Holcombe Green, Lead Director, Kirby Godsey, Chairman and Vincent M. Oddo, Chief Executive Officer/President are the principal owners of the company and each have a 64%, 35% and 1% ownership interest, respectively. HTG Corporation and Spearman Investments are investment firms operated, owned and/or controlled by Holcombe Green and Kirby Godsey. Access Integrated Networks, Inc. ("AIN") was incorporated on May 28, 1996 under the laws of the State of Georgia. On February 20, 2008 AIN acquired all of the capital stock of Birch Telecom, Inc. and filed a Certificate of Amendment changing its name to Birch. Petitioner's principal offices are located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia 30305.

Petitioner has submitted copies of its Certificate of Existence and Certificate of Amendment from the State of Georgia and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. Petitioner has authority to provide resold and local exchange and/or interexchange telecommunications services in the States of Alabama, Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, New York, Ohio,

Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Wisconsin and Wyoming. Petitioner has also obtained authority from the Federal Communications Commission to provide interstate and international telecommunications services. Petitioner's request for authority to provide telecommunications service is pending in the State of California. Petitioner currently provides local exchange and interexchange telecommunications services to both business and residential customers in thirty (30) States. Petitioner states that it has not been denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction and it has not been the subject of any civil or criminal proceedings. The company is currently negotiating interconnection agreements and other contractual arrangements with Verizon New Jersey, Inc. to support its provision of telecommunications services in New Jersey and if necessary, will enter into such agreement with other incumbent local exchange carriers ("ILEC").

Petitioner seeks authority to provide facilities-based and resold local exchange and intrastate interexchange telecommunications services to both residential and business customers in the State of New Jersey. Birch initially plans to offer services in the exchange areas and municipalities listed in the tariff. Petitioner states that it will rely on resale, unbundled network elements ("UNE"), ILEC UNE-replacement services, and other ILEC local service elements to provide telecommunications services within the State of New Jersey. Petitioner has no immediate plans to build facilities in New Jersey. Pursuant to N.J.A.C. 14:10-5.6(b), Birch has filed an initial tariff under Docket No. TT09040308 which will become effective 30 days after the Board approves its petition for local exchange and interexchange authority. Petitioner states that upon its approval, it plans to acquire certain assets of ClearTel Telecommunications, Inc., a telecommunications utility regulated by the Board and by letter dated May 14, 2009, has filed a separate petition under Docket No. TM09050385. Petitioner maintains a toll-free number for customer service inquiries.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3, which requires that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices located in Atlanta, Georgia. Petitioner also states, upon written notice from the Board and/or Board Staff, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, Birch states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel, who, according to Birch, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

Chapter 11 reorganization filed by Birch Telecom, Inc. before its acquisition by AIN:

Birch Telecom, Inc. and its subsidiaries filed a reorganization plan for the District of Delaware under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court in July 2002 and it became effective in October 2002. The company filed for Bankruptcy a second time on August 12, 2005 and emerged from bankruptcy on April 13, 2006 with a revised debt and ownership structure. On February 20, 2008, Birch Telecom, Inc. was acquired by AIN and its name was changed to Birch.

DISCUSSION

On February 8, 1996, the Federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. §253(a).

Any grant of authority is subject to the right of the Board as the state regulatory authority to impose requirements necessary to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. 47 U.S.C. §253(c).

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets of qualified applicants. 47 U.S.C. §253(a). The Board also considers the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services and the Legislature's findings that "competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Birch's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange and interexchange telecommunications services throughout the State of New Jersey.

The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27EE-52 the Petitioner is subject to an annual assessment by both the Board and the Division of Rate Counsel, respectively.

The Board HEREBY ORDERS that:

- 1) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year. Pursuant to N.J.S.A. 48:2-16.3, if Petitioner fails to file an annual report by the due date, Petitioner shall be subject to a penalty of \$5.00 for each day thereafter until such report is filed.
- 2) Pursuant to N.J.S.A. 48:2-62, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Audits an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form are due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintains its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 7/1/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

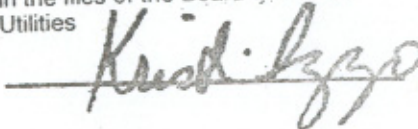

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



IN THE MATTER OF THE PETITION OF BIRCH COMMUNICATIONS, INC.
FOR AUTHORITY TO PROVIDE LOCAL EXCHANGE AND
INTEREXCHANGE TELECOMMUNICATIONS SERVICES
IN THE STATE OF NEW JERSEY

DOCKET NO. TE09040307

SERVICE LIST

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